

# **PUBLIC ACTS**

OF THE

## **STATE OF MAINE,**

PASSED BY THE

### **SEVENTEENTH LEGISLATURE,**

**JANUARY SESSION, 1837.**

---

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 28, 1820.

---

AUGUSTA :  
SMITH & ROBINSON, PRINTERS TO THE STATE.

---

1837.

**EXHIBIT 10 (McLean)**

## MILITIA.

421

why the same should not be organized—the County Commissioners may organize said inhabitants within such territorial limits as they shall deem proper and said County Commissioners shall grant a warrant to some one of the petitioners authorizing him to call the first meeting of said inhabitants—and the inhabitants so assembled may choose all necessary Plantation Officers and transact such other business as plantations in this State are allowed to do—and plantations so organized shall be vested with all the powers and privileges and be subject to all the liabilities of other plantations now organized in this State.

[Approved by the Governor March 25, 1837.]

### Chapter 276.

AN ACT additional to an Act to organize, govern and discipline the Militia of this State.

**SECTION 1.** *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That when it shall appear to the commanding Officer of a Regiment that any Company within his command, is without a commissioned Officer, he shall issue his orders to the Clerk of such Company, to enrol all persons liable to do duty therein, and to return the roll thereof to him forthwith; and if there be no Clerk of such Company, then such commanding Officer shall require in writing, the Assessors of cities, towns or plantations in which such Company is situated, or some other person or persons, to make out and return to him, within ten days, a list of the names of all the persons, liable by law to do military duty in such Company; and if any such Clerk, Assessors or other persons, shall fail to comply, they shall forfeit and pay not less than twenty nor more than one hundred dollars.

Commanding officer of Regiment to require Clerks of Companies which have no commissioned officers to return a roll of all persons liable to do duty therein—or if there be no Clerk then the Assessors of towns to make such return.

Penalty for neglect.

Officers of the Staff to be detailed to drill Companies which shall have been three months without any commanding Officer until &c.

—to keep records of the Company.  
—to prosecute for fines.

Non-commissioned officer or private refusing to notify Company to forfeit not less than 20 nor more than 100 dollars.

When no person will accept the office of Clerk the commanding Officer may require any non-commissioned Officer or private to perform the duty, except to keep the records.

**SECT. 2.** *Be it further enacted,* That whenever any Company shall have remained without any commissioned Officer for the term of three months, the commanding Officer of the Regiment to which said Company belongs, shall detail some suitable Officer of the Staff, or of the line, not above the rank of Lieutenant, to train and discipline said Company, until some Officer shall be elected, or appointed by the Commander-in-Chief, as provided in the second section of the seventh article of the Constitution, and commissioned; and such Officer so detailed, shall have the same power and authority, and be subject to the same liabilities, as if he were Captain of such Company; and he shall keep the records of the Company, and prosecute for all fines and forfeitures, in like manner as Clerks of Companies are authorized and required to do. Whenever the Officer so detailed to command such Company, or, where no Officer shall have been detailed, the commanding Officer, of the Regiment to which such Company belongs, shall, in writing, order any non-commissioned Officer or private to notify the persons liable to do duty in such Company, to appear for any duty required by law, any non-commissioned Officer or private who shall neglect or refuse to notify such persons to meet at the time and place and for purposes mentioned in such order as aforesaid, shall forfeit and pay not less than twenty nor more than one hundred dollars.

**SECT. 3.** *Be it further enacted,* That whenever the office of Clerk in any Company shall become vacant, and it shall appear to the commanding Officer of said Company that there is satisfactory evidence that no person will accept the same, he may issue his order in writing to any non-commissioned Officer or private in said Company, requiring him to perform all the duties of Clerk of said Company, except keeping the records, for a term not exceeding three months, and if any non-com-

## MILITIA.

423

missioned Officer or private so appointed, shall refuse or neglect to perform all or any of the duties of said office during said term, (except keeping the records,) he shall forfeit and pay not less than ten nor more than twenty dollars. And in case of the absence, sickness, or other inability of the Clerk of any Company, the commanding Officer thereof may appoint a Clerk pro tempore; or upon satisfactory evidence that no member of the Company will accept the office pro tempore, he may order any non-commissioned Officer or private in like manner to perform all the duties of the office of Clerk (except keeping the records,) until the Clerk shall be able to perform the same, or some other person be appointed, not exceeding the term of three months; and any person so ordered, refusing or neglecting to perform all the duties of said office (except keeping the records,) shall forfeit and pay not less than ten nor more than twenty dollars. In all such cases the records of the Company shall be kept by the commanding Officer as long as such vacancy, absence, sickness or other inability shall continue; and the records so kept shall be competent evidence of such orders and temporary appointments, as well as of all other matters of which such records would be evidence if kept by the Clerk.

Penalty for their refusing to perform said duty.

—Clerk pro temp. may be appointed in case of absence or sickness of Clerk.

Penalty for refusing to perform said duty.

Records to be kept by commanding Officer, and to be competent evidence.

SECT. 4. *Be it further enacted*, That all fines and forfeitures incurred in neglecting military duty, by members of any Company without Officers, (except forfeitures for refusing to give notice when ordered by the Officer detailed to command such Company, as provided in the second section of this Act or by the commanding Officer of the Regiment; and except forfeitures incurred by Clerks in neglecting to return the roll as required by the first section of this Act,) shall be prosecuted and collected by the Officer detailed to command said Company as provided in the second section of this Act, substantially in the manner that Clerks of Companies are

How fines are to be collected and how to be disposed of.

authorized and required to do by "An Act to organize, govern and discipline the Militia of this State," passed March 8, A. D. 1834, to which this is additional; one half of the amount recovered to be to the use of the Regiment, and the other half to the use of the Officer; and the Officer so prosecuting shall be a competent witness in the case. All fines and forfeitures incurred under the first, second and third sections of this Act, shall be recovered by indictment, or by action on the case, by any person whatever, one half of the sum recovered to be to the use of the State, and the other half to the use of the prosecutor.

**SECT. 5.** *Be it further enacted,* That no No idiot, lunatic, common drunkard, vagabond, pauper, or person convicted of any infamous crime to be eligible for office,—nor unless able bodied, &c., &c. idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able-bodied, male citizens, shall be eligible to any office in the Militia; and whenever it shall appear to the Commander-in-Chief, that any person thus ineligible has received a majority of votes cast at any election of Officers, he shall not commission him, but, with the advice and consent of the Council, shall declare said election null and void, and appoint some person to fill the vacancy.

—vacancy to be filled.

**SECT. 6.** *Be it further enacted,* That all students attending any of the several colleges, academies or seminaries of this State, shall be holden and compelled to do military duty as other persons, in the town where said colleges, academies or seminaries are established.

Students in Colleges made liable to do military duty.

**SECT. 7.** *Be it further enacted,* That whenever any Company shall be paraded, the commanding Officer thereof is hereby authorized verbally to notify the men so paraded, to appear on some future day not exceeding thirty days from the time of such notification, for any military duty required by law, and such notification shall be legal as it respects the men present.

Verbal notice to appear on a future day may be given on parade.

## MILITIA.

425

SECT. 8. *Be it further enacted*, That all commanding officers, subaltern Officers, and all Clerks of Companies be and they hereby are made competent witnesses in law, to testify to all or any facts within their knowledge, in any suit commenced by said Clerk or commanding Officer, for the collection of any fine or forfeiture named in this Act, or in the several Acts to which this is additional.

Officers and Clerks of Companies made witnesses.

SECT. 9. *Be it further enacted*, That whenever any action shall have been commenced, for any fine or forfeiture, by any Clerk of any Company, and said Clerk shall die, resign or refuse, or in any other way be disqualified to prosecute said suit so commenced, it shall be lawful and is hereby made the duty of the commanding Officer of the Company, to assume and prosecute said suit to final judgment and execution; and whenever any fine or forfeiture shall have been incurred by any private or non-commissioned Officer of any Company, and there shall be no Clerk, or the Clerk shall resign or die, or be disqualified, it shall be lawful for any Clerk appointed after said fine or forfeiture has been incurred, to sue for and recover the same; *Provided* said action shall be commenced within the time prescribed by law.

In case of death of Clerk, commanding Officer, to continue prosecution for fines to final judgment—and to commence them where there is no Clerk.

SECT. 10. *Be it further enacted*, That a copy of the record of any Court Martial, certified by the President of such Court, together with a duly authenticated copy of the order convening said Court, shall be conclusive and sufficient evidence to sustain in any Court, any action commenced for the recovery of any fine and costs, or part costs, or either, agreeably to the provisions of an Act to which this is additional.

Copy of records of Courts Martial made evidence in cases.

SECT. 11. *Be it further enacted*, That if any Captain or commanding Officer shall neglect or refuse to make, or cause to be made, a return of the state of his Company as it existed on the day of the annual inspection in May, to the command-

Fine imposed on commanding Officers who neglect to make returns of the May Inspection.

ing Officer of the Regiment, on or before the first day of June annually, and shall so continue to neglect for fifteen days thereafter, being notified by the Adjutant of the Regiment to which such Company belongs, that said return has not been received, he shall forfeit and pay a fine of ten dollars, one half thereof to the use of the State, and the remainder to the Adjutant of said Regiment, who shall be required to collect said fine by an action of debt in any court proper to try the same.

Action may be brought before any Justice of the Peace living in the town where Defendant resides.

SECT. 12. *Be it further enacted*, That any action or complaint, for any fine or forfeiture provided for by this Act, or by that to which this additional, may be brought before any Justice of the Peace, where the Officer, non-commissioned Officer, or private, parent, master, or guardian, who may be liable therefor, may reside, any law to the contrary notwithstanding.

How Courts Martial are to be detailed for the trial of Captains and subalterns.

SECT. 13. *Be it further enacted*, That all Courts Martial for the trial of Officers of and below the rank of Captain, including the Regimental Staff Officers, shall be ordered and detailed by the respective Major Generals of Divisions, from the Division to which the Officer to be tried belongs : And the Court so constituted, shall have and possess all the powers, and be subject to all the duties defined and prescribed in and by the Act to which this is additional ; *Provided however*, That the judgment or sentence of said Court shall, as soon as may be, be certified by the President thereof, under the seal of the Court, to the Major General by whom said Court was detailed, instead of the Commander-in-Chief as in said Act is provided.

Judgment of the Court to be certified to the Major General.

Complaints and charges against Captains and Subalterns to be transmitted by Division Advocate to Major General.

SECT. 14. *Be it further enacted*, That all the duties required to be performed by the Division Advocate in the respective Divisions, in and by the Act to which this is additional, shall be done and performed in the manner therein provided ; excepting and providing that all complaints, charges and

## MILITIA.

427

specifications against the Officers of the rank mentioned in the foregoing section, shall be by him transmitted to the Major General of the Division, to which the officer against whom such complaint is made, belongs, for his consideration.

SECT. 15. *Be it further enacted*, That the compensation of the members of the Court detailed in pursuance of this Act, of the Division Advocate and other Officers, and of witnesses attending the same, shall be the same as is allowed in and by the Act to which this Act is additional, and shall be made up, certified and filed, in the manner therein described.

Compensation of  
members of  
Courts Martial  
and witnesses.

SECT. 16. *Be it further enacted*, That the Major Generals in their respective Divisions, shall have power to appoint an Officer to make a summary inquiry into the truth and circumstances of any matter, contained in any complaint or allegation against any Officer not above the rank of Captain, whose duty it shall be to report the result of such inquiry and investigation to the respective Major Generals, as soon as may be after he shall have completed such investigation, and file his account for such services in the Adjutant General's office, to be presented to the Legislature for allowance and payment.

Major Generals  
may appoint officer  
to make summary  
inquiry into truth of any  
complaint, who  
shall report to  
him their doings.

—to be compensated by Legislature.

SECT. 17. *Be it further enacted*, That all Acts and parts of Acts, inconsistent with the provisions of this Act, be, and the same are hereby repealed.

Acts and parts of  
Acts inconsistent  
repealed.

[Approved by the Governor March 28, 1837.]